

**RLS**  
Associates, Inc.

Moving Public Transportation  
Into the Future

# Ensuring Fairness & Compliance: Reasonable Suspicion and Post-Accident Testing Decisions

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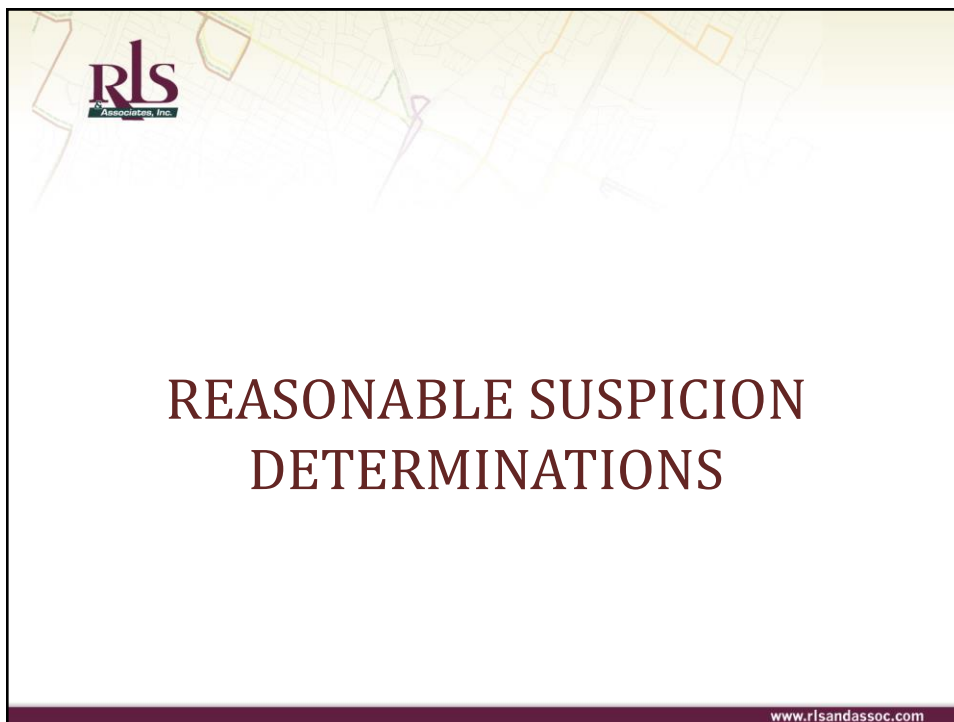
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# REASONABLE SUSPICION DETERMINATIONS

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## WHAT MUST BE EVALUATED?

Must evaluate Specific, Contemporaneous, and Articulate observations concerning:

Appearance

Behavior

Speech

Body Odors

Only one trained supervisor or company official required

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## SUPERVISORS MUST KNOW:

Definition of  
Reasonable  
Suspicion

Definition of  
Role and  
Responsibility  
of Supervisors

Recognition  
of Signs and  
Symptoms of  
Drug Use

Recognition  
of Signs and  
Symptoms of  
Alcohol  
Misuse

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## DEBUNKING THE MYTHS

The intent of the program, as it applies to reasonable suspicion testing, is to provide supervisors with another resource to help them ensure that safety-sensitive employees are fit for duty

- Fitness for duty is a prerequisite for safety!

Supervisors are on the front-line in identifying substance use in the transportation industry

Supervisors are not expected to be police or experts in substance use

Supervisors are expected to protect the safety of the general public as well as employees

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## DEBUNKING THE MYTHS (CONTINUED)

The supervisor's role is to help orient, train, and inform employees about the policy, and to determine when there is reasonable suspicion for testing

Supervisors are expected to determine fitness for duty, not what substances an employee may be misusing

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## DEBUNKING THE MYTHS (CONTINUED)

Supervisors are expected to be able to articulate and substantiate specific behavioral performance or physical indicators of prohibited drug use and alcohol misuse; but it is not the supervisor's responsibility to "diagnose" the individual

Supervisors must remember that a referral for a reasonable suspicion test is not an accusation. It is merely a request for objective data for use in identifying the underlying cause of observed behavior

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## DEBUNKING THE MYTHS (CONTINUED)

The interaction with the employee and all information about the test results should be handled with the strictest confidentiality, and with respect for the employee's privacy

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## TYPICAL SUPERVISORY CONCERNS WITH REASONABLE SUSPICION REFERRALS

Loss of employee confidence/support

Jeopardizing employee's ability to make a living

Do not like confrontation

Possible loss of productivity

Lack of training on the referral process

Fear for personal safety

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## SUPERVISORY FUNCTIONS

### Supervisor's role

- Realization/awareness of potential problem
- Looks for presence of other indicators

### Supervisors should:

- Document changes over time
- Look for multiple indicators, since taken alone, each indicator could be caused by something other than substance use
- Document each reasonable suspicion testing referral as soon as possible following the observation

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## INITIATING THE REFERRAL

Non-confrontational

Non-accusatory

Never solicit a confession

Private location

Think through what you  
are going to say

Anticipate  
questions/denials/threats

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## EXPECTED REACTIONS FROM EMPLOYEE

Denial of drug  
and/or  
alcohol use

Argue his/her  
fitness for  
duty

Argue  
circumstances  
leading to  
referral

Very  
cooperative



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## REASONABLE SUSPICION INTERVENTION AND REFERRAL

Primary issue is safety

Inquire and observe

Isolate and inform the employee

Review your findings

Verify facts

Be respectful of employee's right to privacy/confidentiality

Make the reasonable suspicion decision

Inform that purpose of test is to confirm fitness for duty

Transport the employee\*

Document events

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## SUPERVISORY DON'TS

Try to get a  
confession

Diagnose an  
employee's problem  
as drug use and/or  
alcohol misuse

Discuss your  
suspicions with other  
non-supervisory  
employees

Accuse employee of  
having a substance  
use problem

Put in writing that an  
employee has a  
substance use  
problem

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## CHANGE SETTING AND RE-EVALUATE

Move from  
dark to light/  
light to dark

Walk behind  
the employee

Observe their  
actions during  
the transition

Fine/ gross  
motor skill  
observations



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## FRAMING THE INTERACTION

How you begin the  
conversation with  
the employee will  
determine:

- Win/lose outcome
- Win/win outcome



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## WIN/LOSE OUTCOME

“I think that you are under the influence of... I am sending you for reasonable suspicion testing.”



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## WIN/WIN OUTCOME

“I am concerned about your readiness to perform safety-sensitive functions. I am required to refer you for a test to rule out chemical impairment.”



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## POST-ACCIDENT TESTING

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## USDOT D&A REGULATIONS

49 CFR Part 40



FAA

FMCSA

FRA

PHMSA

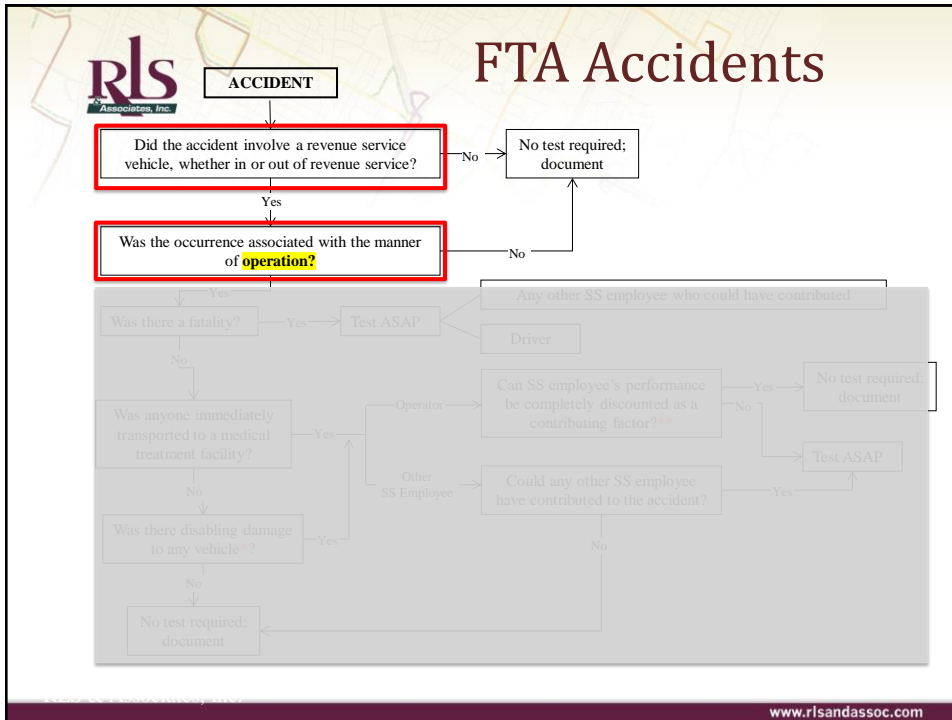
USCG

FTA

49 CFR Part 382

49 CFR Part 655

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## POST-ACCIDENT

### What is Disabling Damage?

- Vehicle cannot be operated under its own power without further damaging vehicle
- **USUALLY** requires a tow, but not always

### What is NOT Disabling Damage?

- Damage to headlights, taillights, turn signals, windshield wipers, horn
- Tire damage/replacement alone is not to be considered disabling damage
- Any other damage which can be easily remedied at the scene of accident with simple tools

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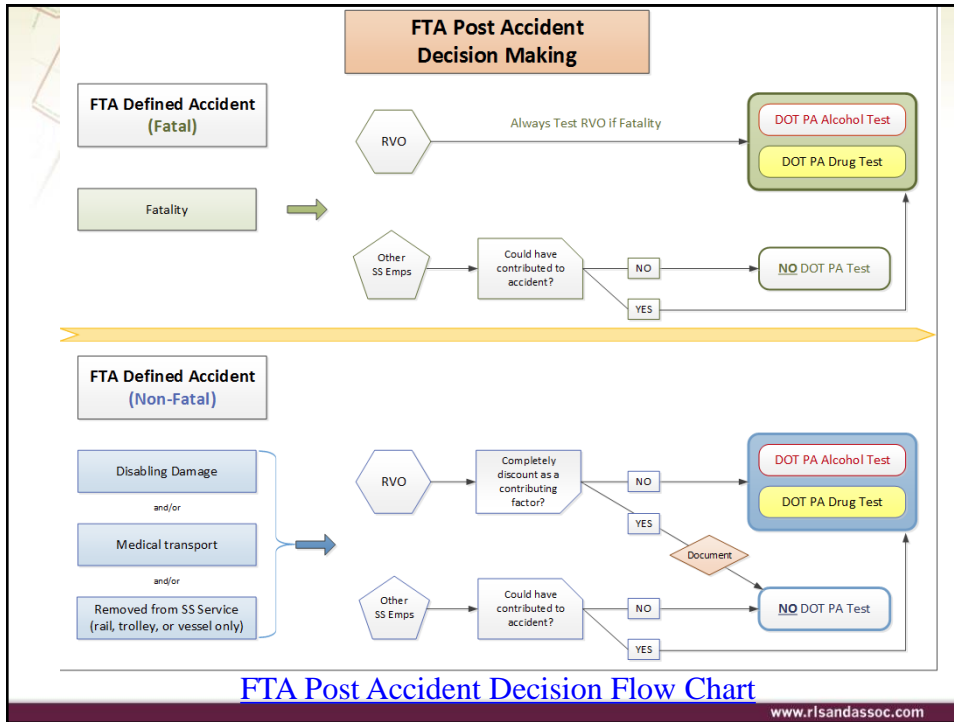
## FMCSA POST-ACCIDENT

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

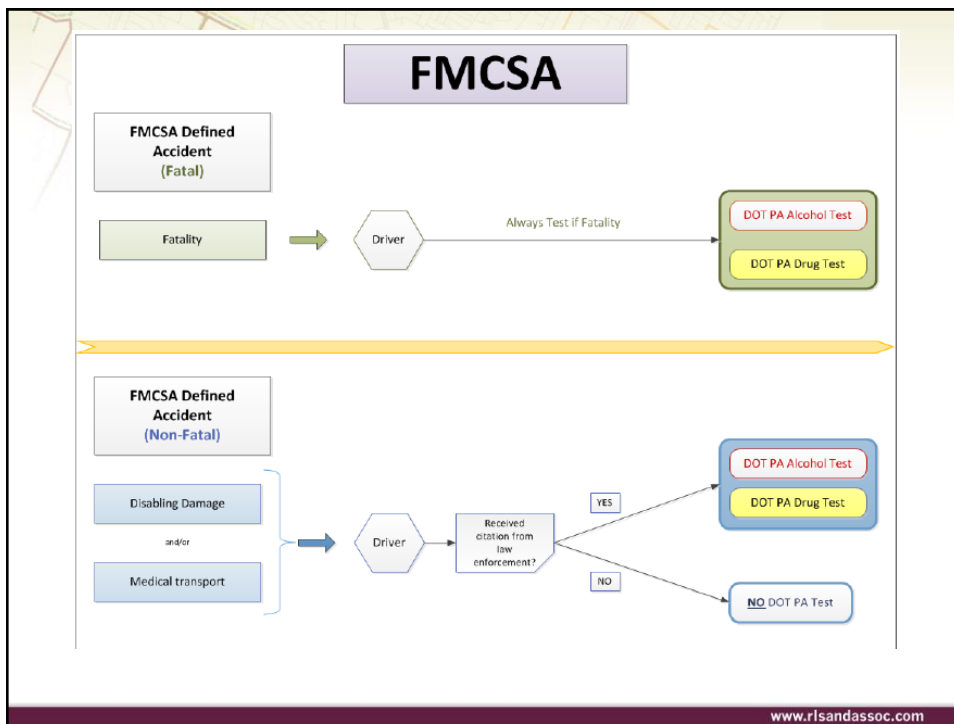
Table is directly from Part [382.303](#)

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## POST-ACCIDENT

### Decision to Test

- Made by employer at the time of the accident
- Use best information available AT TIME OF ACCIDENT
- Decisions should not be reversed based on facts learned later on

### MUST DOCUMENT DECISION

- Best practice is to use a sample form that is standard for each use and is specific to the D/A Decision

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### POST ACCIDENT TESTING DECISION REPORT

*\*\*A separate sheet must be filled out for each covered employee that contributed to the accident\*\**

System Name: \_\_\_\_\_ Date of Accident: \_\_\_\_\_

Time of Accident: \_\_\_\_\_ Time Employer was notified: \_\_\_\_\_

Location of Accident: \_\_\_\_\_

Safety-Sensitive Employee: \_\_\_\_\_ ID # and Position: \_\_\_\_\_  
i.e. Driver, Dispatcher, etc.

1. Did the accident involve a public transit vehicle? ☐ Yes ☐ No

2. Did the accident involve the operation of the vehicle? ☐ Yes ☐ No

3. Was there loss of life as a result of the accident? \* ☐ Yes ☐ No

4. Did an individual suffer a bodily injury and immediately receive medical treatment away from the scene? \* ☐ Yes ☐ No

5. Was there disabling damage to any of the involved vehicles? \* ☐ Yes ☐ No

6. a) Did you perform a drug and/or alcohol test? ☐ Yes ☐ No  
(Use Decision Tree on back of this form) ☐ FTA Authority ☐ Yes ☐ Company Authority ☐ No

b) If no, why not? \_\_\_\_\_

c) For a non-fatal accident, can the covered employee(s) performance be completely discounted as a contributing factor to the accident? ☐ Yes ☐ No

7. a) Was an alcohol test performed within 2 hours? ☐ N/A ☐ Yes ☐ No

b) If no, why: \_\_\_\_\_

8. If no alcohol test occurred, and more than 8 hours elapsed from the time of the accident, please explain: \_\_\_\_\_

9. a) Was a drug test performed within 32 hours? ☐ N/A ☐ Yes ☐ No

b) If no, why: \_\_\_\_\_

10. a) Did the employee leave the scene of the accident without a reasonable explanation? ☐ Yes ☐ No

b) If Yes, please explain: \_\_\_\_\_

Test Determination: \_\_\_\_\_

Name of supervisor making determination: \_\_\_\_\_

Time employee was informed of determination: \_\_\_\_\_

Signature & Title \_\_\_\_\_ Date \_\_\_\_\_

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## POST-ACCIDENT

### FATALITY: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident; and
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

### NON-FATAL: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident, **UNLESS** their performance can be completely discounted as contributing factor (**different from fault**)
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

### Who NOT to Test?

- Employee must be able to give consent
- Cannot test dead or unconscious employee

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## POST-ACCIDENT

### Testing Time Requirements

- All testing must occur as soon as possible, after treating injuries and cooperating with law enforcement
- The Post-Accident "Clock" starts at time of accident, not at time of your decision to test

### Testing Time Limits

- If alcohol test not conducted within **2 hours** – you must document why
- Cease attempts after **8 hours** for alcohol
- Cease attempts after **32 hours** for drugs
- If any of the above time limits are not met, you **MUST** document the reason why

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## POST-ACCIDENT

### Acceptance of Law Enforcement Test Results

- Test results of Federal, State, or Local law-enforcement officials can be used only if results are released
- Employer may only use these if they are unable to do their own test
- Must document reason

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## POST-ACCIDENT

### Common Problems

- Testing often omitted or significantly delayed
- Ill-defined policies
- No documented procedure
- Inadequately trained supervisor
- Lack of supervisor empowerment

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# POST-ACCIDENT

## Common Problems

- Testing just to be safe ★
- Dollar damage
- Preventability
- **Reasonable Suspicion Implications!**
- Citation vs. No Citation (FTA vs FMCSA)

You are prohibited from conducting a DOT post-accident test if the DOT Agency thresholds are not met